

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

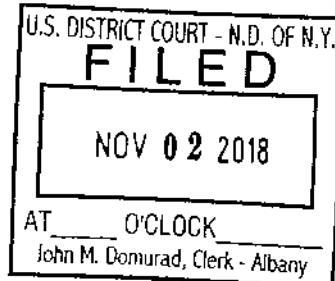
UNITED STATES OF AMERICA,

Petitioner,

-v-

ANDREW MINNICK,

Respondent.



3 18-MC-34
CLS/DEP

**PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS**

The United States of America, by its attorney, Grant C. Jaquith, United States Attorney for the Northern District of New York, Thomas Spina Jr., Assistant United States Attorney, of counsel, petitions this Court for an order enforcing Internal Revenue Service ("IRS") administrative Summons served on the respondent, Andrew Minnick. In support, the United States avers as follows:

1. Jurisdiction over this matter is conferred upon this Court by 26 U.S.C. §§ 7402 and 7604(a) and by 28 U.S.C. §§ 1340 and 1345.
2. Respondent Andrew Minnick is located within the geographical boundaries of this district.
3. Ronald P. Weaver is a Revenue Officer of the Internal Revenue Service ("IRS") employed in the Small Business/Self Employed ("SB/SE") Division North Atlantic Compliance Area of the IRS, located in at the IRS, Elmira, New York. Mr. Weaver's declaration in support of the United States' petition is attached hereto as **Exhibit A**.

4. Revenue Officer Weaver is conducting an investigation into the collection of tax liability of Andrew Minnick for the Form 10140 calendar period(s) ending December 31, 2015 and December 31, 2016.

5. In his capacity as an IRS Revenue Officer, Mr. Weaver is authorized to issue an IRS Summons pursuant to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, 26 C.F.R. § 301.7602-1T, and Internal Revenue Service Delegation Order No. 4 (as revised).

6. Pursuant to the above-described investigation, on February 26, 2018, Revenue Officer Weaver issued an IRS administrative Summons to Andrew Minnick, directing him to appear on March 12, 2018, at the place identified in the Summons. The Summons directed Mr. Minnick to appear and give testimony and to provide information related to the collection of his tax liabilities for 2015 and 2016. The Summons is attached hereto as **Exhibit B**.

7. On February 27, 2018, Revenue Officer Weaver served an attested copy of the Summons upon Mr. Minnick, by leaving at his last and usual abode with his girlfriend, Jessica Baker as evidenced on the Certificate of Service accompanying the Summons. (Exhibit B).

8. On March 12, 2018, Mr. Minnick appeared but refused to comply with the Summons.

9. On March 18, 2018, Office of Chief Counsel, IRS issued a Last Chance appointment letter to Mr. Minnick to appear on April 16, 2018. Mr. Minnick did not appear on that date, or comply with the summons.

10. On June 4, 2018, Assistant U.S. Attorney Kathryn L. Smith sent correspondence to Mr. Minnick attempting to resolve this matter prior to commencing litigation. The letter is attached hereto as **Exhibit C**.

11. As of the date of this petition, the testimony and documents described in the Summons are not in the possession of the IRS.

12. All administrative steps required by the Internal Revenue Code for the issuance of the Summons have been followed.

13. The testimony and collection information sought by the Summons are relevant to the IRS's investigation.

14. No Justice Department referral is in effect within the meaning of 26 U.S.C. § 7602(d)(2) with respect to Mr. Minnick for the tax periods under investigation.

15. In order to obtain enforcement of the Summons, the United States must establish that the Summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS's possession; and (4) satisfies all administrative steps required by the Internal Revenue Code. *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

16. The attached Declaration of Revenue Officer Weaver (Exhibit A) establishes the Government's *prima facie* showing under *Powell*.

WHEREFORE, the United States requests the following relief:

A. That this Court enter an order directing the respondent to show cause in writing, if any, why he should not comply with and obey the aforementioned IRS Summons and every requirement thereof;

B. That this Court enter an order directing the respondent to fully obey the subject Summons and each requirement thereof by ordering the attendance, testimony, and production of the documents required and called for by the terms of the Summons, before Revenue Officer Weaver, or any other proper officer or employee of the IRS, at such time and place as may be set by Revenue Officer Weaver or any other proper officer or employee of the IRS;

C. That the United States may recover its costs in maintaining this proceeding; and

D. That the Court grant such other and further relief as it deems proper or justice may require.

DATED: November 2, 2018
Albany, New York

GRANT C. JAQUITH
United States Attorney

By: /s/ Thomas Spina Jr.
THOMAS SPINA JR.
Assistant U.S. Attorney
United States Attorney's Office
445 Broadway, Room 218
Albany, NY 12207
Tel: (518) 431-0247
Thomas.Spina@usdoj.gov

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Petitioner)
v.) Civil Action No.
ANDREW MINNICK)
Respondent.)

DECLARATION

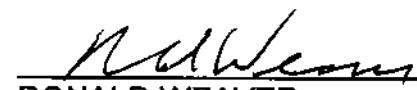
RONALD WEAVER declares, under penalty of perjury, pursuant to 28 U.S.C. section 1746, that the following statements are true except those made on information and belief and, as to those, I believe to be true:

1. I am a duly commissioned revenue officer employed in the Small Business/Self-Employed Division North Atlantic Compliance Area of the Internal Revenue Service at INTERNAL REVENUE SERVICE, 149 W GRAY STREET, ELMIRA, NY 14901-2104.
2. In my capacity as a revenue officer I am conducting an investigation for the collection of tax liability of ANDREW MINNICK for the Form 1040 calendar periods ending DECEMBER 31, 2015 and DECEMBER 31, 2016.
3. In furtherance of the above investigation and in accordance with Section 7602 of Title 26, U.S.C., I issued on February 26, 2018, an administrative summons, Internal Revenue Service Form 6637, to ANDREW MINNICK, to give testimony and to produce for examination books, papers, records, or other data as described in said summons. The summons is attached to the petition as Exhibit A.

4. In accordance with Section 7603 of Title 26, U.S.C., on February 27, 2018, I served an attested copy of the Internal Revenue Service summons described in Paragraph (3) above on the Respondent, ANDREW MINNICK, by leaving the summons at last and usual place of abode, with Jessica Baker (girlfriend of Respondent), as evidenced in the certificate of service on the reverse side of the summons.
5. On March 12, 2018, the Respondent ANDREW MINNICK, appeared but refused to comply with the summons.
6. On March 28, 2018, Office of Chief Counsel, Internal Revenue Service issued a Last Chance 2N56 appointment letter to the Respondent ANDREW MINNICK to appear on April 16, 2018 at 9:00 AM. Appearance was at 149 W Gray Street, Elmira, NY 14901. The Respondent did not appear. His refusal to comply with the summons continues to the date of this declaration. SEE EXHIBIT B.
7. The books, papers, records, or other data sought by the summons are not already in the possession of the Internal Revenue Service.
8. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.
9. It is necessary to obtain the testimony and to examine the books, papers, records, or other data sought by the summons in order to collect the federal tax liability of ANDREW MINNICK for the Form 1040 calendar periods ending DECEMBER 31, 2015 and DECEMBER 31, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18TH day of APRIL, 2018.


RONALD WEAVER
REVENUE OFFICER



Summons

Collection Information Statement

In the matter of ANDREW MINNICK, 32 HALSEYVILLE RD, ITHACA, NY 14850-9235

Internal Revenue Service (Identify Division) SMALL BUSINESS/SELF EMPLOYED

Industry/Area (Identify by number or name) Small Business / Self Employed

Periods: Form 1040 for the calendar periods ending December 31, 2015 and December 31, 2016

The Commissioner of Internal Revenue

To: ANDREW MINNICK

At: 32 HALSEYVILLE RD, ITHACA, NY 14850-9235

You are hereby summoned and required to appear before RONALD WEAVER, an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks, saving account passbooks, records or certificates of deposit for the period:

From 02/01/2017 To 02/01/2018

Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes and judgments receivable, and all life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

INTERNAL REVENUE SERVICE, 149 W GRAY STREET, ELMIRA, NY 14901-2104 (607) 378-0071

Place and time for appearance: At INTERNAL REVENUE SERVICE, 149 W GRAY STREET, ELMIRA, NY 14901-2104

 IRS

on the 12th day of March, 2018 at 9:00 o'clock a.m.

Issued under authority of the Internal Revenue Code this 26th day of February, 2018

Department of the Treasury
Internal Revenue Service
www.irs.gov

Form 6637 (Rev.10-2010)
Catalog Number 25000Q

RONALD WEAVER

Signature of issuing officer

REVENUE OFFICER

Title

Signature of approving officer (if applicable)

Ex. A
(Weaver Decl.)
Original – to be kept by IRS



Certificate of Service of Summons

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	2/27/18	Time	11:18 P
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How I handed an attested copy of the summons to the person to whom it was directed.

Summons

Was I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any).

Served JESSICA BAKER

Signature

Title

REVENUE OFFICER

I certify that the copy of the summons served contained the required certification.

Signature

Title

REVENUE OFFICER



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF CHIEF COUNSEL
SMALL BUSINESS/SELF-EMPLOYED DIVISION COUNSEL
14TH FLOOR
33 MAIDEN LANE
NEW YORK, NEW YORK 10038-4518
(646)259-8100
FAX (855)606-2383

MAR 2 8 2018

CC:SB:1:MAN:2:GL-109914-18
SMeltzer

Andrew Minnick
32 Halseyville Rd.
Ithaca, NY 14850-9235

To Mr. Minnick:

Small Business/Self-Employed North Atlantic Area Collection of the Internal Revenue Service has notified our office that you did not comply with the provisions of the summons served on you on February 27, 2018 requesting collection information for the period February 1, 2017 to February 1, 2018. Under the terms of the summons, you were required to appear before Revenue Officer Ronald Weaver on March 12, 2018.

Legal proceedings may be brought against you in the United States District Court for not complying with this summons. To avoid such proceedings, you are to appear before Revenue Officer:

Name: Ronald Weaver
Date: April 16, 2018
Time: 9:00AM
Address: 149 W Gray St.
Elmira, NY 14901-2104

Ex. B
(Weaver Decl)

CC:SB:1:MAN:2:GL-

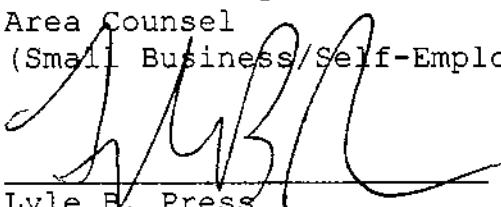
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Any books, records or other documents called for in the summons should be produced at that time. If you have any questions, please contact Revenue Officer Ronald Weaver at 607-378-0071.

Frances F. Regan

Area Counsel

(Small Business/Self-Employed Area 1)

By: 

Lyle B. Press

Associate Area Counsel

(Small Business/Self-Employed)

cc:Peter Pac
Tax Examining Technician
Advisory Territory-1, Buffalo, NY
Internal Revenue Service
11A Clinton Avenue, Room 521
Albany, NY 12207

Ronald Weaver, Revenue Officer

EXHIBIT B



Summons

Collection Information Statement

In the matter of ANDREW MINNICK, 32 HALSEYVILLE RD, ITHACA, NY 14850-9235

Internal Revenue Service (Identify Division) SMALL BUSINESS/SELF EMPLOYED

Industry/Area (Identify by number or name) Small Business / Self Employed

Periods: Form 1040 for the calendar periods ending December 31, 2015 and December 31, 2016

The Commissioner of Internal Revenue

To: ANDREW MINNICK

At: 32 HALSEYVILLE RD, ITHACA, NY 14850-9235

You are hereby summoned and required to appear before RONALD WEAVER, an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks, saving account passbooks, records or certificates of deposit for the period:

From 02/01/2017 To 02/01/2018

Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes and judgments receivable, and all life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

INTERNAL REVENUE SERVICE, 149 W GRAY STREET, ELMIRA, NY 14901-2104 (607) 378-0071

Place and time for appearance: At INTERNAL REVENUE SERVICE, 149 W GRAY STREET, ELMIRA, NY 14901-2104



on the 12th day of March, 2018 at 9:00 o'clock a.m.

Issued under authority of the Internal Revenue Code this 26th day of February, 2018

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 6637 (Rev.10-2010)
Catalog Number 25000Q

RONALD WEAVER

Signature of issuing officer

REVENUE OFFICER

Title

Signature of approving officer (if applicable)

Title



Certificate of Service of Summons

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	2/27/18	Time	1:18 P
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How I handed an attested copy of the summons to the person to whom it was directed.

Summons _____

Was I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any).

Served JESSICA BAKER

Signature

Title

REVENUE OFFICER

I certify that the copy of the summons served contained the required certification.

Signature

Title

REVENUE OFFICER

EXHIBIT C



U.S. Department of Justice

United States Attorney
Western District of New York

100 State Street
Rochester, New York 14614

(585) 263-6760
fax (585) 399-3920

June 4, 2018

Andrew Minnick
32 Halseyville Road
Ithaca, NY 14850-9235

Re: IRS Administrative Summons Non-Compliance

Dear Mr. Minnick,

The U.S. Attorney's office has received a referral from the Internal Revenue Service to initiate a proceeding in Federal District Court arising out of your failure to comply with a summons in connection with your outstanding federal tax debt. We have been informed that you did appear in Elmira on March 12, 2018, as required, but that you refused to fully comply with the summons.

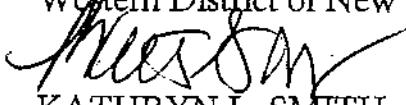
In late March 2018, the IRS Small Business- Self Employed Division Counsel's Office sent you correspondence requesting you to appear on April 16, 2018, in Elmira to avoid referral to the US Attorney's office for initiation of legal proceedings in Federal court. No appearance or attempt to comply with the summons was made.

At this time, this Office is taking the courtesy to reach out to you in an attempt to resolve this matter without further litigation. Please contact me before June 18, 2018 at (585) 399- 3961 to discuss this matter.

Thank you.

Very truly yours,

JAMES P. KENNEDY, JR.
United States Attorney
Western District of New York


KATHRYN L. SMITH
Assistant United States Attorney

KLS/eft

cc: Lyle B. Press,
Associate Area Counsel
IRS Office of Division Counsel, (SB/SE)

Ronald Weaver, Revenue Officer